

**Letter of Findings Number: 08-0089P
Individual Income Tax-Penalty
For the Year 2005**

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ISSUE

I. Tax Administration-Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are a married couple filing a joint return and are hereinafter simply referred to as "Taxpayer." Taxpayer sold what was thought to be an equity interest in an Indiana business, which income would have been attributed to Taxpayer's Illinois domicile.

However, after the original deadline for filing an Indiana return, Taxpayer determined that the sale was of the Indiana business' assets and therefore Taxpayer had Indiana income. Taxpayer filed an income tax return for 2005 on October 12, 2006. The Department assessed a ten percent penalty on the tax determined to be due on the 2005 individual income tax return.

I. Tax Administration-Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to report and remit the proper amount of adjusted gross income tax at or prior to the original filing deadline for the 2005 individual income tax return.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to conclude that the failure to pay Indiana tax was the result of reasonable care sufficient to justify penalty waiver.

FINDING

Taxpayer's protest is sustained.

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